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10  
11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION

14 **MARVIN G. HOLLIS,**

Plaintiff,

15  
16 v.

17 **ELOY MEDINA,**

18  
19 Defendants.

C 07-2980 TEH (PR)

**DEFENDANT'S OPPOSITION  
TO PLAINTIFF'S MOTION  
TO COMPEL DISCOVERY**

20 **INTRODUCTION**

21 Plaintiff's motion to compel discovery should be denied because it fails to comply with the  
22 Federal Rules of Civil Procedure, Northern District local rules, and Plaintiff failed to meet and  
23 confer prior to seeking court intervention.

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 **STATEMENT OF THE CASE**

26 Plaintiff is a California state prisoner proceeding pro se and *in forma pauperis* in this civil-  
27 rights action. On February 25, 2008, Defendant moved the Court for dismissal. (Def.'s Mot.  
28 Dismiss, February 25, 2008, Docket 7.) On March 11, 2008, Defendant moved the Court for a  
Def.'s Opp. to Plaintiff's Mot. to Compel Discovery

*M. Hollis v. E. Medina, et al.*  
C 07-2980 TEH (PR)

1 stay of discovery pending the Court's ruling on the dismissal motion. (Def.'s Mot. Stay, March  
2 11, 2008, Docket 15.)

3 On January 3, 2008 and January 6, 2008, Plaintiff served a Request for Production of  
4 Documents, Set One, and the First Set of Interrogatories on Defendant. (Dec. Fritz ¶ 2.) On  
5 January 31, 2008, the discovery was returned because Defendant had not been served,  
6 acknowledged a waiver of service, or appeared in the action. (Dec. Fritz ¶ 3.) On February 4,  
7 2008, Plaintiff served the First Set of Admissions on Defendant. (Dec. Fritz ¶ 4.) On February  
8 19, 2008, Plaintiff served the Request for Production of Documents, Set One, First Set of  
9 Interrogatories, and First Set of Request for Admissions for the second time. (Dec. Fritz ¶ 5.)  
10 On February 25, 2008, Defendant filed a motion to dismiss and appeared in this action. (Def's.  
11 Mot. Dismiss, February 25, 2008, Docket 7.) Defendant served a response to the First Set of  
12 Requests for Admissions on March 5, 2008. (Dec. Fritz ¶ 6.) On March 5, 2008, Plaintiff filed  
13 a motion to compel discovery against Defendant (Pl.'s Mot. Compel Discovery, March 5, 2008,  
14 Docket 12.) Defendant filed a motion to stay discovery on March 11, 2008. (Def's. Mot to Stay  
15 Discovery, March 11, 2008, Docket 15.)

16 Plaintiff's motion is procedurally defective because it does not comply with the discovery  
17 provisions of the Federal Rules of Civil Procedure and local court rules: (1) Federal Rule of  
18 Civil Procedure 37(1) (requiring a certification stating that a good-faith attempt was made to  
19 meet and confer prior to seeking court intervention); and (2) Northern District of California Local  
20 Rule 37-1(a) (court will not entertain a motion to compel unless the parties first meet and  
21 confer). Plaintiff also served the discovery requests prior to personal service, acknowledgment  
22 of waiver of service, and any appearance by the Defendant.

23 ///

## 24 ARGUMENT

### 25 **I. DEFENDANT WAS NOT OBLIGATED TO RESPOND TO DISCOVERY** 26 **THAT WAS SERVED BEFORE HE WAS A PARTY TO THIS ACTION.**

27 Defendant had no obligation to comply with the discovery requests, when the Defendant  
28 was not personally served with the summons and complaint, waived service, or appeared at the



1 time Plaintiff submitted his requests. (Decl. ¶ 7.) Plaintiff served the discovery on January 3,  
 2 2008, January 6, 2008, February 4, 2008, and February 19, 2008, before Defendants had been  
 3 personally served, waived service, or appeared in this action. (Decl. ¶¶ 2 - 5, 7.) Plaintiff's  
 4 discovery requests are improper on the ground that Plaintiff failed to serve it in compliance with  
 5 Rule 5 before Defendant was a party within the meaning of the discovery rules. Accordingly,  
 6 Plaintiff's motion to compel discovery must be denied.

7 **II. PLAINTIFF DID NOT MEET AND CONFER BEFORE FILING THE MOTION**  
 8 **TO COMPEL.**

9 A motion to compel discovery must include a certification by the moving party that states  
 10 that the movant made a good-faith effort to confer with the party who allegedly failed to provide  
 11 adequate discovery responses. Fed. R. Civ. P. 37(1). And under the Local Rules, this Court will  
 12 not entertain a motion to compel discovery unless the parties have "previously conferred for the  
 13 purpose of attempting to resolve all disputed issues." N.D. Cal. Civ. R. 37-1(a). "Confer"  
 14 means "to communicate directly and discuss in good faith the issue(s) . . ." *Id.* 1-5(n).  
 15 Normally, merely sending a letter "does not satisfy a requirement to 'meet and confer' or to  
 16 'confer.'" *Id.*; *See Soto v. City of Concord*, 162 F.R.D. 603, 623 (N.D. Cal. 1995) (sending a  
 17 letter demanding compliance with a discovery request is not what the court regards as an earnest  
 18 attempt to "meet and confer" on the issues). But for prisoners, "the court does not require in-  
 19 person meetings and instead allows the prisoner and defense counsel to meet and confer by  
 20 telephone or exchange of letters." *Ellis v. Woodford*, No. 05-CV-2110-SI (2007 WL 1033477)  
 21 (N.D. Cal. Apr. 4, 2007) (order denying motion to compel). Although the format for prisoners is  
 22 slightly different, "the substance of the rule remains the same: the parties must engage in a good  
 23 faith effort to meet and confer before seeking court intervention." *Id.* Only after good-faith  
 24 negotiations between the parties fail to resolve the dispute, may a party request judicial  
 25 intervention into a discovery dispute. N.D. Cal. Civ. R. 37-1(b).

26 Plaintiff provides no certification or evidence that he attempted to meet and confer with  
 27 Defendant's counsel to resolve discovery issues. Thus, Plaintiff's motion must be denied.

28 ///

CONCLUSION

Based on the foregoing, Defendant respectfully requests that the Court deny Plaintiff's motion to compel discovery.

Dated: March 21, 2008

Respectfully submitted,

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